

APRIL RIDDER and)	
ERNEST RIDDER,)	
)	
Plaintiff-Appellants)	
)	
vs.)	Appeal Case No. SD24542
)	
RUDOPHLH HIBSCH,)	
)	
Defendant.)	Greene County Case No. 100CC2565
)	
)	

APPELLANTS' LEGAL BRIEF

Oral Argument Request

**WILLIAM H. MCDONALD &
ASSOCIATES, P.C.
300 S. JEFFERSON, STE 600
SPRINGFIELD, MISSOURI 65806
Phone: (417) 869-0581
Fax: (417) 831-7852**

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT	1
STATEMENT OF FACTS	2
POINTS RELIED UPON	
POINT I.....	4
STANDARD OF REVIEW	5
ARGUMENT.....	6
I.....	6
CONCLUSION.....	11
REQUEST FOR ORAL ARGUMENT	11
CERTIFICATE OF SERVICE.....	12
CERTIFICATE OF ATTORNEY	13

TABLE OF AUTHORITIES

STATE CASES

<u>ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.</u> 854 S.W.2d 371, 376 (Mo. banc 1993).....	5
<u>K.G. v. R.T.R.</u> , S.W.2d 795 (Mo. banc 1996)	8, 9, 10

MISSOURI STATUTES

Mo. Rev. Stat. Section 477.060 (1986)	1
Mo. Rev. Stat. Section 507.115.....	8, 9
Mo. Rev. Stat. Section 516.100.....	8
Mo. Rev. Stat. Section 516.120.....	2
Mo. Rev. Stat. Section 516.140.....	2
Mo. Rev. Stat. Section 516.170.....	8
Mo. Rev. Stat. Section 516.371.....	3, 7, 8, 9, 10
Mo. Rev. Stat. Section 566.010.....	7

OTHER AUTHORITIES

Article V, Section 3, Mo. Constitution (as amended 1982)	1
53 JMOB 288.....	10

JURISDICTIONAL STATEMENT

This is a civil action wherein plaintiffs April and Ernest Ridder, (“Plaintiffs”), filed a five-count Petition in the Circuit Court of Greene County, Missouri. Count I of Plaintiffs’ Petition sets forth a cause of action for battery arising out of alleged sexual abuse. Count II of Plaintiffs’ Petition sets forth a cause of action for intentional infliction of emotional distress arising out of alleged sexual abuse. Count III of Plaintiffs’ Petition sets forth a cause of action for negligent infliction of emotional distress arising out of alleged sexual abuse. Count IV of Plaintiffs’ Petition sets forth a cause of action for childhood sexual abuse pursuant to §537.046 RSMo. Count V of Plaintiffs’ Petition sets forth a cause of action for loss of consortium on behalf of Plaintiff Ernest Ridder arising out of the aforementioned sexual abuse. Summary judgment was entered on behalf of defendant Rudolph Hibsich and against plaintiffs April and Ernest Ridder, based on the statute of limitation, on October 19, 2001.

As this appeal does not involve any of the categories reserved for the exclusive appellate jurisdiction of the Supreme Court of Missouri, jurisdiction lies in this Court, the Missouri Court of Appeals for the Southern District. Article V, Section 3, Mo. Constitution (as amended 1982); Mo. Rev. Stat. Section 477.060 (1986).

STATEMENT OF FACTS

On or about June 26, 2000, plaintiffs filed their petition for damages alleging the following counts: Count I – battery; Count II – intentional infliction of emotional distress; Count III – negligent infliction of emotional distress; Count IV – childhood sexual abuse; Count V- loss of consortium. (LF 3-10) Plaintiff April Ridder, at all times herein relevant, was the neice of Defendant Rudolph Hibschi. (LF 3, 13) All counts derive from plaintiff's allegation that she was intentionally, negligently and unlawfully subjected to sexual contact by defendant when plaintiff was nine (9) years of age to the time plaintiff was approximately twelve (12) years of age. (Id.) Plaintiff's date of birth is June 29, 1972. (LF 18) Based upon plaintiff's allegations in paragraph 5 of her petition and plaintiff's date of birth referenced herein, these alleged acts of sexual contact by defendant occurred from approximately 1981 to approximately 1984. (LF 19)

On March 19, 2001, defendant Rudolph Hibschi filed his Motion for Summary Judgment and Suggestions in Support of Motion for Summary Judgment, based on the statute of limitations found in section 516.140, which is a two-year limitation from the age of majority prescribed for assault and battery, section 516.120, which is a five-year limitation from the age of majority prescribed for general torts, and section 537.046, which is a five-

year limitation from the age of majority specifically prescribed for general torts. (LF 58-59) On April 11, 2001, Plaintiffs filed their Suggestion in Opposition to Defendant's Motion for Summary Judgment alleging that the proper statute of limitations is found in §516.371 RSMo., which states as follows: Limitation on action for sexual contact by certain persons. Notwithstanding any provision of law to the contrary, there shall be a ten-year statute of limitation on any action for damages for personal injury caused to an individual by a person within the third degree of affinity or consanguinity who subjects such individual to sexual contact as defined in §566.010, RSMo. §516.371 RSMo. (LF 61-63)

On April 25, 2001, defendant filed Defendant's Reply to Plaintiffs' Suggestions in Opposition to Motion for Summary Judgment of Defendant Rudolph Hibsich alleging that the statute of limitations propounded in §516.371 RSMo. begins running "at the time of the alleged sexual abuse." (LF 82)

Oral argument was made on June 21, 2001 before the honorable J. Miles Sweeny in the Circuit Court of Greene County, Missouri. (LF 91) On October 19, 2001, Defendant's Motion for Summary Judgment which relied on the statute of limitations was sustained as to all counts. (LF 91; SLF 1)

POINTS RELIED UPON

POINT I

The trial court erred in sustaining Defendant's Motion for Summary Judgment based on the statute of limitations, and failed to apply the appropriate statute of limitation after the tolling period for Plaintiff April Ridder's disability of infancy.

Mo. Rev. Stat. Section 516.371

K.G. v. R.T.R., 918 S.W.2d 795 (Mo.banc 1996)

Mo. Rev. Stat. Section 566.010

Mo. Rev. Stat. Section 507.115

STANDARD OF REVIEW

Because the grant of summary judgment is purely an issue of law, the standard of review is essentially de novo. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993).

The record is reviewed in the light most favorable to the party against whom judgment was entered, and the court should accord the non-moving party the benefit of all reasonable inferences from the record. Id.

ARGUMENT

The trial court erred in sustaining Defendant's Motion for Summary Judgment based on the statute of limitations, and failed to apply the appropriate statute of limitation after the tolling period for Plaintiff April Ridder's disability of infancy.

Plaintiff April Ridder was born June 29, 1972. (LF 18) Plaintiff April Ridder turned 18 on June 29, 1990. Plaintiff April Ridder filed her Petition in this action on June 26, 2000 (LF 90). Plaintiff April Ridder became twenty-eight (28) years of age on June 29, 2000, two days after this suit was filed.

In Missouri, there is one statute of limitation for actions for damages for personal injury caused to an individual by one who is within the third degree of affinity to the victim who subjects such individual to sexual contact, which is as follows:

Limitation on action for sexual contact by certain persons. -

Notwithstanding any provision of law to the contrary, there shall be a ten-year statute of limitation on any action for damages for personal injury caused to an individual by a person within the third degree of affinity or consanguinity who subjects such individual to sexual contact as defined

in §566.010, RSMo. (emphasis added.)

Mo. Rev. Stat. Section 516.371.

Section 566.010, RSMo defines sexual contact as follows:

(3) “Sexual contact” means any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, for the purpose of arousing or gratifying sexual desire of any person.

Mo. Rev. Stat. Section 566.010.

Plaintiff has pled and defendant has admitted that April Ridder, at all times herein relevant, was the niece of defendant Rudolph Hibschi. (LF 3,13) Defendant Rudolph Hibschi is within the third degree of affinity of plaintiff April Ridder. Furthermore, Plaintiffs have adequately pled that Defendant subjected plaintiff April Ridder to various instances of inappropriate “sexual contact” for Defendant’s own sexual gratification. (LF 3-10) Therefore, each count of Plaintiff’s Petition which arises from the aforementioned acts and would be subject to the ten-year statute of limitation.

The pivotal issue in connection with this appeal is whether §516.371 is tolled until a victim reaches the age of majority. “Infant” is defined for civil suit purposes as “any person who has not attained the age of eighteen

years.” §507.115 RSMo. Only persons of the age of eighteen (18) or older, not otherwise disqualified, may commence an action in his or her own name as a real party in interest in the state of Missouri. Id.

The Missouri Supreme Court in the case of K.G. v. R.T.R., 918 S.W.2d 795 (Mo.banc 1996) held as follows:

“The provision relating to tolling for persons under twenty-one years of age of §516.170 is not applicable to §516.371, and the provision of §516.100, relating to accrual of causes of action when damages are ascertainable, is also not applicable to the statute of limitation for incest found in §516.371. Nothing in §516.371 suggests that the running of the statutory period is triggered by accrual of damage or injury. Thus, that statute begins running at the time of the act of incest unless otherwise tolled.” Id. at 798. (emphasis added)

In K.G. v. R.T.R., the Plaintiff’s cause of action would have been barred whether or not §516.371 RSMo. was tolled until the age of majority. Therefore, the Court never specifically ruled whether §516.371 RSMo. is tolled until the age of eighteen. However, the Court did state the following:

“Even if it is assumed that the ten-year statute began to run only after plaintiff was no longer disabled to sue because of

minority, she lost that disability on her eighteenth birthday, January 18, 1983. §507.115 Thus, under §516.371, plaintiff's cause of action would be barred not later than January 18, 1993." K.G. v. R.T.R., 918 S.W.2d 795 at 798 (Mo.banc 1996)

The Supreme Court could have simply stated that §516.371 RSMo is not tolled until the age of majority, but they simply did not. They went as far as analyzing the result under the very circumstances of this case. Other legal authorities have interpreted this language to mean that the statute is tolled. For instance, the case note in K.G. v. R.T.R. reads as follows: "limitations period for incest expired, at the latest, ten years after plaintiff reached the age of majority. . . ." Also, "Missouri Limitation Period for Child Sexual Abuse," an article written for the Journal of the Missouri Bar stated: "the 10-year limitation, unless tolled for delayed discovery, runs from the time of the last act. When the alleged abuse occurred during childhood, the 10-year limitation, unless tolled for delayed discovery, runs from the plaintiff's eighteenth birthday." 53 JMOB 288 *citing* K.G. v. R.T.R., 918 S.W.2d 795 (Mo.banc 1996)

It is the Plaintiffs contention that it only makes sense that §516.371 RSMo. is tolled until a victim reaches the age of majority. First, it is clear that the legislature intended to increase the statute of limitation specifically

with regards to incest or family relationships. Section 516.371 RSMo. became effective on August 28, 1999, well after §537.046 which is specific to child sexual abuse which is undisputedly tolled until the age of majority. Second, if the legislature wanted the statute of limitation to begin running at the time of the incest, minor victims under the age of thirteen (13) would receive no benefit from the extension. Minor victims under the age of eight (8) would have the statute of limitation lapse prior to ever having a right to sue in the courts of Missouri.

Based upon the foregoing, Plaintiffs ask the Court for its ruling that the trial court be reversed and this matter remanded for trial.

CONCLUSION

Based upon the foregoing, the trial court erred in sustaining Defendant's Motion for Summary Judgment based on the statute of limitations, and failed to apply the appropriate statute of limitation after the tolling period for Plaintiff April Ridder's disability of infancy.

WHEREFORE, Plaintiffs ask the Court for its Order reversing the trial court and for its Order remanding this action to the trial court for trial.

REQUEST FOR ORAL ARGUMENT

Appellants respectfully requests that they be permitted to present oral argument on the issues addressed in this appeal.

WILLIAM H. McDONALD & ASSOCIATES
A Professional Corporation

By _____
W. Tom Norrid
Missouri Bar No. 48765

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed to all attorneys of record by placing same in the United States Mail, postage prepaid, duly addressed to their business address on the 19th day of February, 2002.

Paul Link
Husch & Eppenger, LLC
750 North Jefferson
Springfield, MO 65802-3799

Attorney of Record

WILLIAM H. McDONALD & ASSOCIATES, P.C.
300 South Jefferson, Suite 600
Post Office Box 1245
Springfield, Missouri 65801
Telephone: (417) 869-0581
Facsimile: (417) 831-7852

**IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT**

APRIL AND ERNEST RIDDER,

Appellants,

vs.

RUDOLPH HIBSCH,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

Appeal No. SD24542

CERTIFICATE OF ATTORNEY

I, W. Tom Norrid, certify that:

1. I am the attorney for plaintiffs/appellants in the above-captioned matter.
2. The Brief of Appellants filed with this certificate complies with the limitations contained in Rule 84.06(b).
3. The Brief of Appellants contains _____ words.
4. The disk filed in this matter has been scanned for viruses and is virus-free.
5. On this ____ day of February, 2002, I have filed with the Missouri Court of Appeals, Southern District, ten (10) copies of Brief of Appellants along with a disk containing the brief and I have delivered to opposing counsel/parties two copies of Brief of Appellant along with a disk containing the brief to their addresses listed below by the United States Mail:

Paul D. Link
Husch & Eppenberger, LLC
750 N. Jefferson
Springfield, MO 65802

WILLIAM H. McDONALD & ASSOCIATES, P.C.

By: _____

W. Tom Norrid, # 48765
300 S. Jefferson, Ste. 600
Post Office Box 1245
Springfield, Missouri 65801
Telephone: (417) 869-0581
Facsimile: (417) 831-7852
ATTORNEY FOR APPELLANT
APRIL AND ERNEST RIDDER